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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Chih An International, Inc.

Serial No. 76276800

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LLP for Chih An International, Inc.

Russ Herman, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney).

Before Hairston, Holtzman and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On June 26, 2001, Chih An International, Inc.
(applicant) applied to register the mark SPEEDRATED in
typed form on the Principal Register for goods identified
as "golf clubs and golf club shafts" in International Class
28. The application (Serial No. 76276800) was based on an
allegation of a bona fide intention to use the mark in
commerce.

The examining attorney refused registration on the ground that the mark was merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), because the mark SPEEDRATED describes a feature of the goods inasmuch as the term "when used in connection with golf clubs or golf club shafts, immediately conveys information as to a significant feature or function of the goods. That feature forms an integral part of the purchasing decisions by determining the best club suited to a golfer's game." Examining Attorney's Brief at 4. Applicant argues that the mark "is an incongruous unitary word which does not deprive competitors of an apt description of their competitive goods. SPEEDRATED suggests a number of features or qualities associated with golf, golf clubs and shafts, but fails to describe any such feature of the clubs or shafts themselves." Applicant's Brief at 18.

After the examining attorney made the refusal final, applicant appealed to this board.

For a mark to be merely descriptive, it must immediately convey knowledge of the ingredients, qualities, or characteristics of the goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 205 USPQ 505,

507 (CCPA 1980). Courts have long held that to be "merely descriptive," a term need only describe a single significant quality or property of the goods. Gyulay, 3 USPQ2d at 1009; Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959). Descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. In re Abcor Dev. Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

In this case, the examining attorney introduced two NEXIS printouts set out below to support his refusal.¹

The "Tsunami" driver is offered in two head sizes. With both models available in a variety of lofts, and featuring top-quality, speed-rated graphite shafts specifically matched to the head for optimal balance. *Business Wire*, March 8, 2000.

Golfsmith builds its heads with a swing speed rating. If your swing speed is 85 m.p.h. (136.p km/h), you will be fitted with an 11-degree clubhead with a face thickness designed for maximum rebound for a swing of that speed. *The Standard (St. Catharines)*, May 3, 2001.

We start our analysis by observing that the two isolated references to a term is hardly overwhelming

¹ The examining attorney also introduced copies of dictionary definitions of "speed" and "rated" and asks that we take judicial notice of these definitions, which we do. Examining Attorney's Brief at 5. See University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). However, these general definitions do not add much support for the descriptiveness refusal.

support for the descriptiveness refusal. Moreover, even these two references cannot be given much weight. The first reference is from a wire service. The second reference is from a Canadian paper.² Traditionally, the board did not accept wire service excerpts and foreign publications as evidence of how the term is perceived in the United States. See In re Men's International Professional Tennis Council, 1 USPQ2d 1917, 1918 n.5 (TTAB 1986):

Releases by proprietary news services are primarily circulated to newspapers and news journals whose editors select from the releases those stories of sufficient interest to publish. Therefore, their appearance in the NEXIS database only in the form of the proprietary release does not prove that the news release appeared as a story in any newspaper or magazine circulated in this country. Indeed, the absence from the Examining Attorney's showing, of any NEXIS excerpts from stories in United States newspapers or magazines which republished any of the seven news releases, can only suggest that they may not have been circulated here.

See also R.J. Reynolds Tobacco Co. v. Brown & Williamson Tobacco Co., 226 USPQ 169, 173 (TTAB 1985) ("It

² With his brief, the examining attorney introduced a full copy of the excerpt, which identified the title of the publication for the first time. We now add that *The Standard (St. Catharines)* originates from St. Catharines, Ontario. www.stcatharinesstandard.ca. We note this information to complete the evidence that the examining attorney has made of record. In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818, 820 (Fed. Cir. 1986) ("Let it be clear that by citing only a portion of an article, that portion is not thereby insulated from the context from whence it came").

is also obvious from the editorial content of and other advertising carried that the magazine is directed to young women residing in the U.K., hence, the single use of 'The New Look' in the MORE ad would have had little, if any, impact on United States purchasers. Accordingly, we agree with B & W that the evidence has no probative value in determining whether, as perceived by cigarette purchasers in the United States, the term 'new look' is merely descriptive"); In re Appetito Provisions Co., 3 USPQ2d 1553, 1555 n.6 (TTAB 1987).

Recently, the board has taken notice of the advances in electronic communication and relaxed the standards under which we will consider wire service articles and foreign publications.

This Board would be blind if it did not recognize that during the past fifteen years, there has been a dramatic change in the way Americans receive their news. In the 1980's personal computers were in their infancy as was the transmission of news stories via the Internet. Put quite simply, we believe that communications have changed dramatically during the past fifteen years such that by now it is by no means uncommon for even ordinary consumers (much less sophisticated doctors and researchers) to receive news not only via tangible newspapers and magazines, but also electronically through personal computers. Thus, it is much more likely that newswire stories will reach the public because they can be picked up and "broadcast" on the Internet. In short, while we are not saying that newswire stories are of the same probative value as are stories appearing in magazines and newspapers, we think that the situation has changed such that said newswire stories have decidedly

more probative value than they did when this Board decided the Professional Tennis Council and Appetito Provisions cases.

In re Cell Therapeutics Inc., 67 USPQ2d 1795, 1798 (TTAB 2003).

In another case, the board discussed the change in the traditional method of considering foreign publications.

[I]t is reasonable to assume that professionals in medicine, engineering, computers, telecommunications and many other fields are likely to utilize all available resources, regardless of country of origin or medium. Further, the Internet is a resource that is widely available to these same professionals and to the general public in the United States. Particularly in the case before us, involving sophisticated medical technology, it is reasonable to consider a relevant article from an Internet web site, in English, about medical research in another country, Great Britain in this case, because that research is likely to be of interest worldwide regardless of its country of origin.

In re Remacle, 66 USPQ2d 1222, 1224 n.5 (TTAB 2002)

Thus, in light of these cases, we will not exclude these articles from consideration, but we do not give them the same weight as United States newspapers and periodicals, especially as in this case where there is no other corroboration of similar uses of the term in newspapers or periodicals in the United States or on advertising or articles on the Internet.³ It is interesting

³ Applicant notes that even in the two articles of record, one article uses the term "speed rating" rather than "speed rated."

to note that no other publication is in evidence to show that the Tsunami driver features "speed-rated graphite shafts."

Obviously, the ultimate question in this case is whether the term SPEEDRATED will immediately inform prospective purchasers of a feature, characteristic, or quality of the goods, which in this case are golf clubs and golf club shafts.⁴ We are certainly left to wonder whether prospective purchasers will immediately understand that applicant's term describes a feature or characteristic of the goods. The examining attorney's argues that applicant's term "is a phrase of the combination type that is adequately descriptive of a numerical calculation of the distance of motion (e.g. club swing distance) measured by the magnitude of time (e.g. time it takes to complete club swing)." Examining Attorney's Brief at 5. The limited evidence of record does not support this conclusion.⁵ Nor is it apparent that this explanation will immediately come to mind when prospective purchasers encounter the term SPEEDRATED on golf clubs and golf club shafts. In re The Rank Organization Limited, 222 USPQ 324, 326 (TTAB 1984)

⁴ We agree with applicant that the examining attorney's analogy to automobile tires is neither relevant nor supported by the record.

⁵ The examining attorney's discussion of golf club manufacturing and fitting is not evidence.

(The "fact that the term "LASER" is capable of being analyzed does not render the term merely descriptive").

"It is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork." Remacle, 66 USPQ2d at 1224. In this case, there is no evidence that the individual terms "speed" or "rated" are used to describe golf clubs and golf club shafts. Furthermore, the evidence does not demonstrate that the combined term "speed rated" is used to describe golf clubs and golf club shafts. Therefore, we are left with little but guesswork if we were to conclude that the mark is merely descriptive.

Obviously, we base our decision on the limited evidence we have before us in this case.⁶ Because we have doubts as to whether applicant's mark is merely descriptive, as we are required to do, we resolve those doubts in applicant's favor. In re Morton-Norwich Products, Inc., 209 USPQ 791, 791 (TTAB 1981) (The Board's practice is "to resolve doubts in applicant's favor and

⁶ While applicant has introduced numerous registrations for marks containing the terms "speed" and "rated" or variations of those terms, we do not find this evidence very persuasive. In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (Even "if some prior registrations had some characteristics similar to Nett Designs' application, the PTO's allowance of such prior registrations does not bind the Board or this court").

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publish the mark for opposition"). See also Remacle, 66
USPQ2d at 1224.

Decision: The refusal to register applicant's mark
SPEEDRATED is reversed.